

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

AUG -8 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2007-0052-PR
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
MICHELE LEE KELLER,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
	)	

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PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052804

Honorable Nanette M. Warner, Judge

REVIEW GRANTED; RELIEF DENIED

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Michele Keller

Tucson  
In Propria Persona

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P E L A N D E R, Chief Judge.

¶1 Pursuant to a plea agreement, petitioner Michele Keller was convicted in January 2006 of solicitation to sell a narcotic drug and was sentenced to an aggravated term of three years' imprisonment. Keller filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. In her post-conviction petition, she argued her

counsel had been ineffective in failing to request a change of judge and failing to contact alibi witnesses and claimed she had been coerced into signing her plea agreement by counsel's alleged representations that (1) Keller would have been sentenced to twenty-five years in prison if she were convicted after a jury trial and (2) under the plea agreement, she would receive the presumptive sentence of 2.5 years' imprisonment. She also argued the sentencing court had erred in considering her four prior felony convictions as aggravating circumstances because, Keller maintained, her plea agreement "calls for no priors." Finally, without explaining her reference, Keller cited *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). The trial court denied relief. In her petition for review, Keller requests "a hearing because of witnesses, that exist, that would have changed the outcome of plea or trial—or that the courts reverse the lower court[']s decision of sentencing [and] grant the petition of the presumptive of 2.5 [years' imprisonment]."

¶2 We review a trial court's ruling on a petition for post-conviction relief for abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). The trial court denied relief in a thorough minute entry that identified the claims Keller had raised and resolved them correctly in a manner that permits meaningful review by this court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We find no abuse of discretion.

¶3 As the trial court correctly noted, although Keller maintained that she had asked her attorney to seek a change of judge, she failed to provide any evidence that such

a request would have been consistent with applicable rules. *See* Ariz. R. Crim. P. 10.1, 10.2, 16A A.R.S. Thus, she failed to show her attorney's inaction was objectively unreasonable under prevailing professional standards, as required for a claim for ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶4 Also, as detailed in the trial court's minute entry, the court had advised Keller personally in open court about the consequences of her plea agreement, including the range of sentences the court might impose and Keller's waiver of her right to have a jury determine, beyond a reasonable doubt, whether she was guilty of the offenses charged and, if so, the existence of any aggravating circumstances to be considered at sentencing. *See* Ariz. R. Crim. P. 17.2, 16A A.R.S. Keller had said she understood the plea agreement and the rights she was waiving, which had been explained by her counsel, and that she had not "felt any force, pressure[,] or threats of any type" when she decided to plead guilty. Keller had then admitted facts establishing the elements necessary for her conviction. Keller's claims of actual innocence and coercion, as well as her claims for sentencing relief pursuant to *Blakely*, are foreclosed by her responses to the court's questions at her change-of-plea hearing. *See State v. Hamilton*, 142 Ariz. 91, 94, 688 P.2d 983, 986 (1984); *see also State v. Denning*, 155 Ariz. 459, 465, 747 P.2d 620, 626 (App. 1987).<sup>1</sup>

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<sup>1</sup>Keller was mistaken that her plea agreement provided that her prior convictions would not be considered by the court at sentencing. In her petition for post-conviction relief, Keller cited the portion of her plea agreement in which she avowed she had fully

¶5 We adopt the trial court's ruling. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Although we grant the petition for review, we deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge

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disclosed all prior convictions and which further provided that the state could withdraw if additional prior convictions were discovered. Nothing in Keller's plea agreement precluded the court's consideration of prior convictions as aggravating circumstances.